BUILDING COVENANTS.—"DWELLING HOUSE."—A covenant prohibited the erection of anything except dwelling houses. *Held,* that it is not violated by the erection of an apartment house, the term "dwelling house" being broad enough to include an apartment building. *Church* v. *Madison Ave. Bldg. Co.,* (N. Y. 1915) 108 N. E. 444.

In its broadest significance, the word dwelling house denotes a building used as a settled human abode, and, in common parlance, when not qualified, conveys the notion of a single home. *Evans & Finch's Case,* 1 Cro Car. 340. But in its application to specific circumstances courts have arrived at diametrically opposite conclusions. On the one hand are those holding flatly that an apartment house is not a dwelling house. *Sanders* v. *Dixon,* 114 Mo. App. 229, 89 S. W. 577; *Skillman* v. *Smathehurst,* 57 N. J. Eq. 11; *Harris* v. *Roraback,* 137 Mich. 292; *Schadt* v. *Brill,* 173 Mich. 647, 11 MICH. LAW REV. 521. Taking the opposite view is the Illinois court, holding that buildings containing more than one family do not violate such a restriction as in the principal case. *Hutchinson* v. *Ulrich,* 145 Ill. 336, 34 N. E. 556, 21 L. R. A. 391. The New York court, in arriving at the same conclusion, has the support of its own precedents. *Holt* v. *Fleischman,* 78 N. Y. Supp. 647; *Bates* v. *Logeling,* 122 N. Y. Supp. 251. So, too, in Pennsylvania, *Johnson* v. *Jones,* 244 Pa. 386, 52 L. R. A. (N. S.) 325 It is a fact to be noted, however, that these decisions deal with situations in the metropoli of those states, and the conclusions of the courts are largely influenced by buildings surrounding those in question. In view of such a diversity of opinion it would seem that each court must decide the case according to the contextual language of the covenant and the extenuating circumstances. In the principal case the court indicates that if the restriction were to *private* dwellings the decision would be otherwise.

CONSTITUTIONAL LAW.—CHANGE IN MANNER OF PUNISHMENT.—Plaintiff in error was found guilty of murder, the punishment for that crime at the time it was committed being death by hanging within the county jail, or its inclosure, in the presence of specified witnesses; and was sentenced to death under a subsequent act which prescribed electrocution as the means of producing death instead of hanging, fixed the place therefor within the penitentiary, and permitted the presence of more invited witnesses than had theretofore been allowed. *Held,* the later act was not *ex post facto* in respect to the said offense. *Malloy* v. *South Carolina,* 35 Sup. Ct. 507.

In answer to the "meticulous objection based upon change of place for execution and increased number of witnesses," the court refers to *Holden* v. *Minnesota,* 137 U. S. 483, and *Rooney* v. *North Dakota,* 196 U. S. 319. "The constitutional inhibition of *ex post facto* laws was intended to secure substantial personal rights against arbitrary and oppressive legislative action, and not to obstruct mere alteration in conditions deemed necessary for the orderly infliction of humane punishment." Disposing of the more serious objection as to the change in the method of producing death, the court refers to the legislation of various states substituting electrocution for hanging, and states that "this result is the consequent of a well grounded belief that electrocu-

tion is less painful and more humane than hanging. * * * The statute under consideration did not change the penalty—death—for murder, but only the mode of producing this, together with certain non-essential details in respect of surroundings. The punishment was not increased, and some of the odious features incident to the old method were abated." The court follows the doctrine laid down in *Calder* v. *Bull,* 3 Dall. 386, by Mr. Justice CHASE, who included in his enumeration of *ex post facto* laws, "every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed," and who further said "But I do not consider any law *ex post facto,* within the prohibition, that mollifies the rigor of the criminal law; but only those that create or aggravate the crime; or increase the punishment or change the rules of evidence, for the purpose of conviction." The right of the legislature to change the punishment for crimes already committed, provided the situation of the accused is not altered to his disadvantage, and the province of the courts in applying this test have been consistently recognized by this court and most of the state courts. *In re Medley, Petitioner,* 134 U. S. 160; *Rooney* v. *North Dakota,* 196. U. S. 319; *Commonwealth* v. *Wyman,* 12 Cush. (Mass.) 237; *Commonwealth* v. *Gardner,* 11 Gray (Mass.) 438; *McGuire* v. *State,* 76 Miss. 504. In the three cases last cited, a change in punishment from death to life imprisonment was upheld as being in mitigation of the former penalty. The extent to which some courts have gone in sustaining such legislation on this ground is shown by the case of *Strong* v. *State,* 1 Blackf. (Ind.) 193, in which a statute was sustained that changed the punishment for offenses formerly punishable by whipping not exceeding 100 stripes to a term in the penitentiary not exceeding seven years. In New York an act changing the punishment from death to life imprisonment at hard labor, with a possibility of capital punishment thereafter in the discretion of the governor, has been held *ex post facto,* if applied to acts committed before its passage. *Shepard* v. *People,* 25 N. Y. 406; *Hartung* v. *People,* 22 N. Y. 95. In these cases, the doctrine was laid down, although it was perhaps unnecessary to the decision, that a law is *ex post facto* which punishes an act in a different manner from that in which it was punishable when committed, "irrespective of the question whether the new punishment is or is not more merciful or lenient," on the ground that that question should not be left to the discretion of legislators or judges. This rule has, however, apparently found little favor with the courts of other states, and doubt was thrown upon its soundness in a *dictum* in *People* v. *Hayes,* 140 N. Y. 484, when applied to cases where the change is "of that nature which no sane man could by any possibility regard in any other light than that of a mitigation of punishment."

CONSTITUTIONAL LAW.—DISCRIMINATION AGAINST ALIENS.—A New York statute provided that all persons employed upon any work for the state, or any county, town, or city therein, either directly or through contractors, should be American born citizens, or persons naturalized in the United States, preferably residents of that state; and provided a penalty for any violation thereof by any contractor or sub-contractor on any public work.